

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>92-253</u>
)	
BAKCOR BROADCASTING, INC., DEBTOR)	File No. BRH-900330VV
c/o DENNIS ELAM, TRUSTEE)	
)	
For Renewal of License of)	
Station KLIK(FM))	
Lubbock, Texas)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	File No. BPED-900629MK
FOUNDATION OF TEXAS, INC.)	
)	
For Construction Permit for a New)	
FM Station on Channel 229C1)	
Lubbock, Texas)	

To: Honorable Walter C. Miller
Administrative Law Judge

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND FOR SUSPENSION OF PROCEDURAL DATES**

Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Bakcor") and Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") by their respective attorneys and pursuant to Section 73.3525 of the Commission's Rules, hereby jointly request that the Presiding Judge simultaneously: (a) approve the settlement agreement submitted herewith; (b) dismiss the above-captioned application of SEMFOT; (c) grant the above-captioned application of Bakcor; and (d) dismiss the pending motions to enlarge. Bakcor and SEMFOT also respectfully request that the

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Presiding Judge immediately suspend the procedural dates in this case established in Prehearing Order (FCC 92-1030), released November 2, 1992.

In support whereof, the following is respectfully shown:

1. The applications of Bakcor and SEMFOT are mutually exclusive and were designated for hearing by Hearing Designation Order, DA 92-1427, released October 26, 1992. By subsequent Order, FCC 92M-1028, released October 30, 1992, the Chief Administrative Law Judge designated Administrative Law Judge Walter C. Miller to serve as presiding officer. In the Presiding Judge's Prehearing Order, supra, he encouraged the parties to explore settlement of the case and established dates for pre-hearing procedures.

2. The attached Settlement Agreement provides for the dismissal of SEMFOT's application and grant of Bakcor's renewal application, eliminating the mutual exclusivity between the applicants and the need for a hearing. There is no monetary consideration being paid and the settlement agreement is consistent with the FCC's rules prohibiting payments to challengers in a comparative renewal proceeding. See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants (First Report and Order), 4 FCC Rcd 4780 (1989).

3. Pursuant to Section 311(c)(3) of the Communications Act of 1934, as amended, and Section 73.3525(a) of the Rules, approval of a settlement agreement may be granted where (1) the agreement is consistent with the public interest; and (2) it is shown that no party to the agreement filed its application for the purpose of reaching or effectuating such agreement.

4. With regard to the first criterion, the parties have provided, under penalty of perjury, declarations wherein they affirm that approval of the settlement agreement will serve the public interest in that the time and expense of continued litigation will be avoided and the resources of the FCC and the parties, one of which is in a Chapter 7 bankruptcy proceeding, will be conserved. The settlement will also facilitate resolution of the bankruptcy proceeding, consistent with the Commission's determination that the public interest is served by "accommodat[ing] the policies of the federal bankruptcy law with those of the Communications Act." See, e.g., KOZN FM Stereo 99 Ltd., Debtor in Possession, 5 FCC Rcd 2849 (1990), citing La Rose v. FCC, 494 F.2d 1145, 1147, n.2 (D.C. Cir. 1974).

5. With regard to the second criterion, the parties have stated, under penalty of perjury, in their declarations that their respective applications were not filed for the purpose of reaching a settlement.

6. The parties also hereby request that the procedural dates in this proceeding be suspended as of this date, pending action on the joint request for settlement.

7. In view of the foregoing, the parties respectfully submit that they have satisfied the requirements of Section 73.3525 of the Rules and that the settlement should be approved.

WHEREFORE, Bakcor and SEMFOT respectfully request that all procedural dates in the above-captioned proceeding be SUSPENDED immediately, that the Settlement Agreement be APPROVED, that SEMFOT's application be DISMISSED WITH PREJUDICE, that Bakcor's application for renewal of license for Station KKI(FM) be GRANTED, and that the above-captioned proceeding be TERMINATED.

Respectfully submitted,

BAKCOR BROADCASTING, INC., DEBTOR,
C/O DENNIS ELAM, TRUSTEE

By:

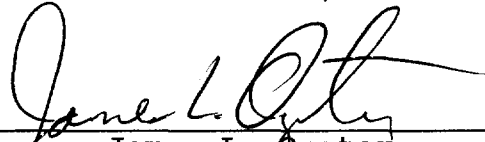

Lawrence Roberts
Linda J. Eckard

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1919 Pennsylvania Ave., N.W.
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(202) 296-0533

Its Attorneys

December 28, 1992

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

By 
James L. Oyster

Law Offices of James L. Oyster
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

Its Counsel

December 23, 1992

ATTACHMENT A

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 23rd day of December 1992, by and between Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") and Dennis Elam, Chapter 7 Trustee for Bakcor Broadcasting, Inc., Debtor ("Bakcor").

W I T N E S S E T H

WHEREAS, Bakcor is the licensee of Station KLIK(FM), Lubbock, Texas (the "Station") and timely filed an application with the Federal Communications Commission ("FCC") to renew the license of that Station on March 30, 1990.

WHEREAS, SEMFOT filed a timely application on June 29, 1990, seeking the same frequency on which the Station operates and which thus is mutually exclusive with Bakcor's license renewal application.

WHEREAS, the applications filed by Bakcor and SEMFOT remain pending and are now the subject of a comparative hearing.

WHEREAS, Bakcor and SEMFOT want to resolve the conflict between their applications.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound hereby, Bakcor and SEMFOT agree as follows:

1. **GRANT OF BAKCOR'S APPLICATION.** The parties hereby request the immediate grant of Bakcor's pending application for renewal of the license for Station KLIK(FM), Lubbock, Texas (File No. BRH-900330VV). The request to grant Bakcor's application is unconditional and is unrelated to any other actions that the parties agree to take herein and is not dependent upon the result of any actions that the parties agree to take herein.

2. **DISMISSAL OF SEMFOT'S APPLICATION.** The parties hereby request the immediate dismissal of SEMFOT's application for Channel 229C1 in Lubbock, Texas (File No. BPED-900629MK). The request to dismiss SEMFOT's application is unconditional and is unrelated to any other actions that the parties agree to take herein and is not dependent upon the result of any actions that the parties agree to take herein. SEMFOT agrees not to appeal any FCC action approving the dismissal of its application.

3. **DISMISSAL OF MOTIONS TO ENLARGE.** The parties hereby request the dismissal of the pending motions to enlarge that each party filed against the other without any further action on those motions.

4. **KAMY MODIFICATION APPLICATION.** Caprock Educational Broadcasting Foundation, a corporation affiliated with SEMFOT, is the licensee of Station KAMY(FM), Lubbock, Texas, which operates as a noncommercial station. Currently, KAMY is authorized to operate with an ERP of less than one kilowatt. On March 28, 1988, Caprock filed an application to increase the ERP for KAMY to 40 kilowatts. That application remains pending. The parties understand that the application may be before the full Commission for consideration in conjunction with an investigation of stations licensed to and/or affiliated with SEMFOT. Bakcor agrees to use its best efforts and to cause its communications counsel to use their best efforts to cooperate with counsel for SEMFOT to seek a grant from the Commission of the pending application of KAMY to modify facilities to obtain a power increase.

5. **MOTION SEEKING ARBITRATION.** Bakcor is under the supervision of the United States Bankruptcy Court for the Western District of Texas, Midland/Odessa Division (Case No. BK-89-70218). While under the supervision of the Bankruptcy Court, Bakcor entered into an agreement with SEMFOT dated September 16, 1991, in an effort to resolve this comparative proceeding. The September 1991 agreement provided for the sale of Station KIKI from Bakcor to SEMFOT. Bakcor filed a motion to terminate the September 1991 agreement and U.S. Bankruptcy Court Judge Ronald B. King granted that motion on April 22, 1992. SEMFOT has filed an appeal of that Order to the U.S. District Court and the appeal remains pending.

a. SEMFOT agrees to file a motion prior to January 13, 1993, with Judge King asking that he order binding arbitration to resolve the dispute between Bakcor and SEMFOT involving the sale of Station KIKI(FM) to SEMFOT. Bakcor agrees not to oppose the motion for binding arbitration filed by SEMFOT. If while the motion seeking arbitration is pending the FCC grants the pending modification application to increase the power of Station KAMY, then SEMFOT agrees to withdraw the motion seeking an order on arbitration and to dismiss its appeal currently pending in the U.S. District Court.

b. Should Judge King grant SEMFOT's motion and order that arbitration occur, then the parties agree to join in a request for an expedited procedural schedule so that the arbitration may be concluded as quickly as possible. SEMFOT agrees that if the arbitrator(s) conclude the September 1991 agreement between Bakcor and SEMFOT should not have been terminated, that SEMFOT's only remedy will be to assign its rights under the agreement to a party who has the qualifications to be a licensee of the FCC and neither

SEMFOT nor any affiliated company will seek to acquire Station KKI(FM). If the FCC grants the pending modification application to increase the power of Station KAMY at any point during the arbitration process, then SEMFOT agrees to join with Bakcor immediately to request that the arbitration proceeding be terminated and to file immediately a request seeking to dismiss its appeal currently pending in the U.S. District Court.

c. Should Judge King either refuse to consider SEMFOT's motion or deny SEMFOT's motion and refuse to require that arbitration occur, then SEMFOT agrees not to appeal that decision. If at any time thereafter the FCC grants the pending modification application to increase the power of Station KAMY, then SEMFOT agrees to file immediately a request to dismiss its appeal currently pending in the U.S. District Court.

6. **EXPENSES.** Each party hereto shall bear all of its own expenses incurred in connection with the transactions contemplated by this Agreement.

7. **SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. No party hereto may assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other party, and any such attempted assignment or delegation without such consent shall be void.

8. **AMENDMENTS.** The terms of this Agreement may be changed amended, modified, waived, discharged or terminated only by a written instrument executed by the party waiving compliance. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later date to enforce the same. No waiver by any party of any condition or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

9. **GOVERNING LAW.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Texas.

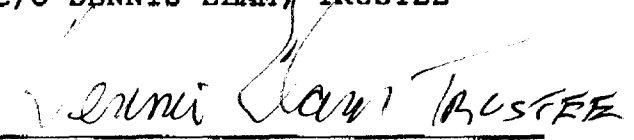
10. **ENTIRE AGREEMENT.** This Agreement constitutes the full and entire understanding between the parties with regard to the subjects hereof and reflects the intent of the parties as a result

of discussions held on December 21, 1992, which such discussions were summarized in a Memorandum of Understanding of that same date.

11. **EXECUTION AND COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed all as of the day and year first above written.

BAKCOR BROADCASTING, INC., DEBTOR
C/O DENNIS ELAM, TRUSTEE



Dennis Elam, Chapter 7 Trustee
for Bakcor Broadcasting, Inc.,
Debtor

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

T. Kent Atkins, President

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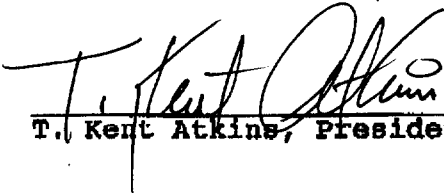
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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed all as of the day and year first above written.

BAKCOR BROADCASTING, INC., DEBTOR
C/O DENNIS ELAM, TRUSTEE

Dennis Elam, Chapter 7 Trustee
for Bakcor Broadcasting, Inc.,
Debtor

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.


T. Kent Atkins, President

ATTACHMENT B

Declarations Under Penalty of Perjury

DECLARATION

Dennis Elam hereby makes the following declaration:

1. He is the Court-appointed Trustee for Bakcor Broadcasting, Inc., Debtor, licensee of Station KKIK-FM, Lubbock, Texas.

2. The license renewal application for Station KKIK was not filed for the purpose of obtaining a settlement.

3. The settlement of the case will serve the public interest by resolving litigation before the FCC, thereby conserving the resources of the FCC and the parties.

4. Neither Bakcor nor Elam has been paid nor been promised any consideration in connection with the settlement of this case, except for the mutual promises set forth in the Settlement Agreement being filed herewith.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12/23/92.



Dennis Elam, Trustee
for Bakcor Broadcasting,
Inc., Debtor

DECLARATION

T. Kent Atkins hereby makes the following declaration:

1. He is President of Southwest Educational Media Foundation of Texas, Inc., applicant for a new FM station in Lubbock, Texas.

2. The application was not filed for the purpose of obtaining a settlement.

3. The settlement of the case will serve the public interest by resolving litigation before the FCC, thereby conserving the resources of the FCC and the parties.

4. Neither Southwest Educational nor Atkins has been paid nor been promised any consideration in connection with the dismissal of the application, except for the mutual promises set forth in the Settlement Agreement being filed herewith.

I declare under penalty of perjury that the foregoing is true and correct. Executed on DECEMBER 23, 1992.



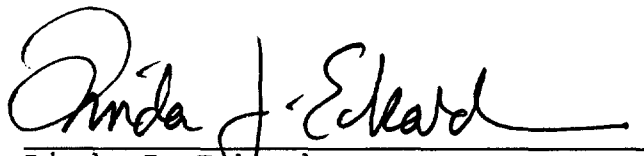
T. Kent Atkins, President
Southwest Educational Media
Foundation of Texas, Inc.

CERTIFICATE OF SERVICE

Linda J. Eckard, an attorney in the office of Roberts & Eckard, P.C., hereby certifies that she has sent a copy of the foregoing "Joint Motion for Approval of Settlement Agreement and for Suspension of Procedural Dates" by hand delivery, on this 28th day of December, 1992, to the following:

*Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
2000 L Street, Second Floor
Stop Code 0900
Washington, D.C. 20554

*Paulette Laden, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554



Linda J. Eckard